In the

Supreme Court

of the

United States

OCT 2 1973

CASE NO. 73-176

ARTHREE, INC., et al.,

Petitioners,

vs.

HOWARD KASKEL, et al.,

Respondents.

REPLY BRIEF IN RESPONSE TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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MIAMI REVIEW — 371-6880 — 377-3322

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INTRODUCTION

The reply brief is submitted by petitioners in response to certain points raised in the brief in opposition to the petition for writ of certiorari filed on behalf of respondents, Howard Kaskel, et al. In respondents' brief a point was raised suggesting that this court lacks jurisdiction of this appeal because the decision rendered by the District

Court of Appeal, Third District of Florida, was based upon independent state grounds to the extent that a consideration of the federal question was not essential to that court's ruling. This particular point had not been argued before and this brief is submitted pursuant to Rules of the Supreme Court, Rule No. 24-4, which authorizes reply briefs addressed to new issues.

The facts of this case are set out in detail in petitioners' writ of certiorari. Petitioners are the owners of the Carriage House, the status of which is subject of this law suit and appeal and that structure will be referred to by name in this brief.

Citation to the appendix will be by letters "App." and will refer to the appendix contained in petitioners' writ for certiorari previously filed herein.

QUESTION PRESENTED

WHETHER THE DECISION OF THE FLORIDA DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA, WAS BASED ON SUFFICIENT INDEPENDENT STATE GROUNDS.

ARGUMENT

In order to evaluate the decision rendered by the Florida District Court of Appeal, Third District, one must remember that that court was not operating in a vacuum. It had before it litigants who had filed a complaint in the Circuit Court of Florida, Thirteenth Judicial Circuit, which was predicated upon the proposition that section 4-d of

Ordinance No. 289 of the City of Miami Beach discriminated in its impact and application between essentially identical business entities and acted to deprive the petitioners the constitutional safeguards contained in the equal protection and due process clauses of the Fourteenth Amendment. The District Court of Florida was considering an appeal from a decision rendered by the trial court in favor of the petitioners which found that the petitioners:

> . . . does operate a bona fide hotel with all of the services that hotels normally provide to guests, that it always has and does maintain one hundred or more sleeping and guest room accommodations for transients and that it is recognized in the community as a hotel . . . .

The trial court then articulated the basis of their decision:

> It is apparent that the Plaintiffs in the instant case desire only to maintain stores and offices which are the same as the stores and offices maintained and permitted to be maintained, in the buildings of their immediate neighbors such as the Doral Beach Hotel, the Fountainebleau Hotel, and the others mentioned. Section 4-d of City of Miami Beach ordinance number 289 attempts to restrict the use of the premises of these Plaintiffs so as to prevent them from using them in a manner similar to the uses of their immediate neighbors, and, therefore, it is unreasonable, arbitrary, confiscatory and unconstitutional insofar as its application to these Plaintiffs is concerned. (App. 3, 5)

It was upon the foundation of the issues presented to the trial court and the opinion rendered by that tribunal that the appeal was presented to the District Court of Appeal, Third District of Florida. An examination of the District Court's holding leads to the compelling conclusion that their decision stands as a statement condoning an invidious form of economic discrimination and constitutes an abridgment of the petitioners' constitutional rights and is unsupported by a sufficient independent state grounds.

Petitioners suggest that a consideration of sufficient independent state grounds is properly controlled by the judicial principles enunciated by this court in the case of *Enterprises Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157; 375 Ct. 318; 61 L.Ed. 644 (1916), wherein the court stated at page 164 that:

> . . . But where the non-Federal ground is so interwoven with the other (independent state grounds) as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain. . . . (Parenthetical supplied)

Respondents correctly state in their brief at page 3 that the only issue before the District Court of Appeal, Third District of Florida, was whether the petitioners were required by law to be treated as a hotel. Respondents seek to divest this Court of jurisdiction of this appeal on the grounds that a determination of the status of the Carriage House as a hotel was resolved by the application of a definitional standard. An examination of the opinion of the District Court of Appeal reveals the error of this interpretation. The District Court of Appeal recognized

that the Carriage House operated as a bona fide hotel; it conceded that the City of Miami Beach and the State of Florida had on numerous occasions affirmed the status of the Carriage House as a hotel; and it acknowledged that the Carriage House was recognized in the community as a hotel (App. 16, 17, 21). In spite of the compelling conclusions to be drawn from these findings the District Court of Appeal held that the petitioners were not operating a hotel because it had originally been conceived and constructed primarily as an apartment building with a few hotel rooms and that regardless of bona fide use being made of the physical structure that:

> . . . the determination of whether a given building is an apartment hotel or a hotel must be made upon the basis of the structure rather than upon changes in the building's use. (App. 20)

This holding renders the opinion arbitrary on its very face. This is not the act of a court merely applying a definition to arrive at a conclusion. This decision holds that a viable distinction can be made between similarly composed and competing business enterprises based on the physical structure housing their activities to the exclusion of an analysis of the current bona fide functions and activities being conducted in that structural shell. This conclusion lies at the heart of the petitioners' insistence that the failure to classify the Carriage House as a hotel for the purpose of allowing it to compete on an equal footing with other area hotels is a patent violation of the equal protection and due process standards contained in the Fourteenth Amendment and is totally unsupported by independent state grounds.

This misapplication of legal principles is amply summarized by the over-worked analogy "you can stamp C-O-W on a horse, but that does not make the horse a cow." Quite obviously, if the Carriage House is operating a bona fide hotel with all of the services, bookkeeping procedures, registration requirements and all other activities normally associated with hotel management then the act of labeling it something other than a hotel constitutes an exercise in fundamental discrimination.

CONCLUSION

The decision rendered by the District Court of Appeals, Third District of Florida, which purported to determine the status of the Carriage House in relation to adjacent competing hotels which was justified by that court upon an analysis of the physical structure housing the business enterprise is not a decision predicated upon sufficient independent state grounds so as to divest this court of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief in Response to Respondents' Brief in Opposition to Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District, has been served upon each of the following:

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